



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2018-0004; FRL-9974-57-OECA]

Inquiry to Learn Whether Businesses Assert Business Confidentiality Claims

Regarding Waste Import and Export

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comment.

SUMMARY: The Environmental Protection Agency (EPA) occasionally receives Freedom of Information Act (FOIA) requests for documentation received or issued by EPA or data contained in EPA database systems pertaining to the export and import of Resource Conservation and Recovery Act (RCRA) hazardous waste from/to the United States, the export of cathode ray tubes (CRTs), the export and import of spent lead acid batteries (SLABs) from the United States, and the export and import of RCRA universal waste from/to the United States. The purpose of this notice is to inform “affected businesses” about the documents or data sought by these types of FOIA requests in order to provide the businesses with the opportunity to assert claims that any of the information sought that pertains to them is entitled to treatment as confidential business information (CBI), and to send comments to EPA supporting their claims for such treatment.

“Affected businesses” are businesses identified or referenced in the documents that were submitted to EPA by the submitting business which may have a right to assert a CBI claim concerning information that pertains to them and may do so in response to this notice. Certain businesses, however, do not meet the definition of “affected business,” and are not covered by today's notice. They consist of any business that actually submitted to EPA any document at issue pursuant to applicable RCRA regulatory

requirements and did not assert a CBI claim as to information that pertains to that business in connection with the document at the time of its submission; they have waived their right to do so at a later time. This notice also serves to inform the public that based on the Confidentiality Determinations for Hazardous Waste Export and Import Documents, EPA-HQ-OLEM-2016-0492, published on December 26, 2017 (Confidentiality Rule), this is the last time EPA will be publishing the Federal Register Notice “Inquiry to Learn Whether Businesses Assert Business Confidentiality Claims.” Effective June 26, 2018, the Confidentiality Rule applies a confidentiality determination such that no person can assert confidential business information (CBI) claims for documents related to the export, import, and transit of hazardous waste, including those hazardous waste managed under the alternate standards, and excluded cathode ray tubes (CRTs). Therefore, publication of this Federal Register notice will no longer be needed since “affected businesses” will no longer be able to claim CBI on any documents on which they are listed.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The period for submission of comments may be extended if, before the comments are due, you make a request for an extension of the comment period and it is approved by the EPA legal office. Except in extraordinary circumstances, the EPA legal office will not approve such an extension without the consent of any person whose request for release of the information under the FOIA is pending.

ADDRESSES: Submit your comments, identified by Docket ID No.

EPA-HQ-OECA-2018-0004, by one of the following methods:

- E-mail: kreisler.eva@epa.gov
- <http://www.regulations.gov>: Follow the on-line instructions for

submitting comments.

- Address: Eva Kreisler, International Compliance Assurance

Division, Office of Federal Activities, Office of Enforcement and

Compliance Assurance, Environmental Protection Agency, Mailcode: 2254A,

1200 Pennsylvania Ave., N.W., Washington, DC 20460.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OECA-2018-0004.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. Instructions about how to submit comments claimed as CBI are given later in this notice.

The <http://www.regulations.gov> site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment. Please include

your name and other contact information with any disk or CD-ROM you submit by mail. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the HQ EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., N.W., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the docket for this notice is (202) 566-1752.

FOR FURTHER INFORMATION, CONTACT: Eva Kreisler, International Compliance Assurance Division, Office of Federal Activities, Office of Enforcement and Compliance Assurance, Environmental Protection Agency, Mailcode: 2254A, 1200 Pennsylvania Ave., N.W., Washington, DC 20460; telephone number: (202) 564-8186; e-mail address: kreisler.eva@epa.gov.

SUPPLEMENTARY INFORMATION: Today's notice relates to any documents or data in the following areas: (1) Export of Resource Conservation and Recovery Act

(RCRA) hazardous waste, during calendar year 2017 or before, under 40 CFR part 262, subparts E and H; (2) import of RCRA hazardous waste, during calendar year 2017 or before, under 40 CFR part 262, subparts F and H; (3) transit of RCRA hazardous waste, during calendar year 2017 or before, under 40 CFR part 262, subpart H, through the United States and foreign countries; (4) export of cathode ray tubes, during calendar year 2017 or before, under 40 CFR part 261, subpart E; (5) export and import of non-crushed spent lead acid batteries with intact casings, during calendar year 2017 or before, under 40 CFR part 266 subpart G; (6) export and import of RCRA universal waste, during calendar year 2017 or before, under 40 CFR part 273, subparts B, C, D, and F; and (7) submissions from transporters, during calendar year 2017 or before, under 40 CFR part 263, or from treatment, storage or disposal facilities under 40 CFR parts 264 and 265, related to exports or imports of hazardous waste which occurred during calendar year 2017 or before, including receiving facility notices under 40 CFR 264.12(a)(1) and 265.12(a)(1) and import consent documentation under 40 CFR 264.71(a)(3) and 265.71(a)(3).

I. General Information

EPA has previously published notices similar to this one in the Federal Register, the latest one being at 82 FR 6506, January 19, 2017, that address issues similar to those raised by today's notice. The Agency did not receive any comments on the previous notices. Since the publication of the January 19, 2017, Federal Register notice, the Agency has continued to receive FOIA requests for documents and data contained in EPA's database related to hazardous waste exports and imports and exports of excluded CRTs.

II. Issues Covered by This Notice

Specifically, EPA receives FOIA requests from time to time for documentation or data related to hazardous waste exports and imports that may identify or reference multiple parties, and that describe transactions involving the movement of specified materials in which the parties propose to participate or have participated. This notice informs “affected businesses,” \1\ which could include, among others, “transporters,” \2\ and “receiving facilities” or “foreign receiving facilities,” \3\ of the requests for information in EPA database systems and/or contained in one or more of the following documents:

(1) Documents related to the export of Resource Conservation and Recovery Act (RCRA) hazardous waste, during calendar year 2017 or before, under 40 CFR part 262, subparts E and H, including but not limited to the “notification of intent to export,” \4\ “manifests,” \5\ “annual reports,” \6\ “EPA acknowledgements of consent,” \7\ “any subsequent communication withdrawing a prior consent or objection,” \8\ “responses that neither consent nor object,” “exception reports,” \9\ “transit notifications,” \10\ and “renotifications”; \11\ (2) documents related to the import of hazardous waste, during calendar year 2017 or before, under 40 CFR part 262, subparts F and H, including but not limited to notifications of intent to import hazardous waste into the U.S. from foreign countries; (3) documents related to the transit of hazardous waste, during calendar year 2017 or before, under 40 CFR part 262, subpart H, including notifications from U.S. exporters of intent to transit through foreign countries, or notifications from foreign countries of intent to transit through the U.S.; (4) documents related to the export of cathode ray tubes (CRTs), during calendar year 2017 or before, under 40 CFR part 261, subpart E, including but not limited to notifications of intent to export CRTs; (5)

documents related to the export or import of non-crushed spent lead acid batteries (SLABs) with intact casings, during calendar year 2017 or before, under 40 CFR part 266 subpart G, including but not limited to notifications of intent to export SLABs; (6) submissions from transporters under 40 CFR part 263, or from treatment, storage or disposal facilities under 40 CFR parts 264 and 265, related to exports or imports of hazardous waste which occurred during calendar year 2017 or before, including receiving facility notices under 40 CFR 264.12(a)(1) and 265.12(a)(1) and import consent documentation under 40 CFR 264.71(a)(3) and 265.71(a)(3); and (7) documents related to the export and import of RCRA “universal waste” \12\ under 40 CFR part 273, subparts B, C, D, and F.

\1\ The term “affected business” is defined at 40 CFR 2.201(d), and is set forth in this notice, below.

\2\ The term “transporter” is defined at 40 CFR 260.10.

\3\ The terms “foreign receiving facility” and “receiving facility” are defined, for different purposes, at 40 CFR 262.81.

\4\ The term “notification for export” is described at 40 CFR 262.83(b), and for import at 40 CFR 262.84(b).

\5\ The term “manifest” is defined at 40 CFR 260.10.

\6\ The term “annual reports” is described at 40 CFR 262.83(g).

\7\ The term “EPA Acknowledgement of Consent” is defined at 40 CFR 262.81.

\8\ The requirement to forward to the exporter “any subsequent communication withdrawing a prior consent or objection” is found at 42 U.S.C. 6938(e)

\9\The term “exception reports” is described at 40 CFR 262.83(h).

\10\ The term “transit notifications” is described at 40 CFR 262.83(b)(5).

\11\ The term “renotifications” is described at 40 CFR 262.83(b)(4).

\12\ The term “universal waste” is defined at 40 CFR 273.9.

Certain businesses, however, do not meet the definition of “affected business,” and are not covered by today’s notice. They consist of any business that actually submitted information responsive to a FOIA request, under the authority of 40 CFR parts 260 through 266 and 268, and did not assert a claim of business confidentiality covering any of that information at the time of submission. As set forth in the RCRA regulations at 40 CFR 260.2(b), “if no such [business confidentiality] claim accompanies the information when it is received by EPA, it may be made available to the public without further notice to the person submitting it.” Thus, for purposes of this notice and as a general matter under 40 CFR 260.2(b), a business that submitted to EPA the documents at issue, pursuant to applicable regulatory requirements, and that failed to assert a claim as to information that pertains to it at the time of submission, cannot later make a business confidentiality claim. \13\ Nevertheless, other businesses identified or referenced in the same documents that were submitted to EPA by the submitting business may have a right to assert a CBI claim concerning information that pertains to them and may do so in response to this notice.

\13\ However, businesses having submitted information to EPA relating to the export and import of RCRA universal waste are not subject to 40 CFR 260.2(b) since they

submitted information in accordance with 40 CFR part 273, and not parts 260 through 266 and 268, as set forth in 40 CFR 260.2(b). They are therefore affected businesses that could make a claim of CBI at the time of submission or in response to this notice.

In addition, EPA may develop its own documents and organize into its database systems information that was originally contained in documents from submitting businesses relating to exports and imports of hazardous waste. If a submitting business fails to assert a CBI claim for the documents it submits to EPA at the time of submission, not only does it waive its right to claim CBI for those documents, but it also waives its right to claim CBI for information in EPA's documents or databases that is based on or derived from the documents that were originally submitted by that business. \14\

\14\ With the exception, noted above, of the submission of information relating to the export and import of RCRA universal waste.

In accordance with 40 CFR 2.204(c) and (e), this notice inquires whether any affected business asserts a claim that any of the requested information constitutes CBI, and affords such business an opportunity to comment to EPA on the issue. This notice also informs affected businesses that, if a claim is made, EPA would determine under 40 CFR part 2, subpart B, whether any of the requested information is entitled to business confidential treatment.

1. Affected Businesses

EPA's FOIA regulations at 40 CFR 2.204(c)(1) require an EPA office that is responsible for responding to a FOIA request for the release of business information ("EPA office") to determine which businesses, if any, are affected businesses. "Affected business" is defined at 40 CFR 2.201(d) as: with reference to an item of business information, a business which has asserted (and not waived or withdrawn) a business confidentiality claim covering the information, or a business which could be expected to make such a claim if it were aware that disclosure of the information to the public was proposed.

2. The Purposes of This Notice

This notice encompasses two distinct steps in the process of communication with affected businesses prior to EPA's making a final determination concerning the business confidentiality of the information at issue: the preliminary inquiry and the notice of opportunity to comment.

a. Inquiry To Learn Whether Affected Businesses (Other Than Those Businesses That Previously Asserted a CBI Claim) Assert Claims Covering Any of the Requested Information

Section 2.204(c)(2)(i) provides, in relevant part: If the examination conducted under paragraph (c)(1) of § 2.204 discloses the existence of any business which, although it has not asserted a claim, might be expected to assert a claim if it knew EPA proposed to disclose the information, the EPA office shall contact a responsible official of each such business to learn whether the business asserts a claim covering the information.

b. Notice of Opportunity To Submit Comments

Sections 2.204(d)(1)(i) and 2.204(e)(1) of Title 40 of the Code of Federal Regulations require that written notice be provided to businesses that have made claims of business confidentiality for any of the information at issue, stating that EPA is determining under 40 CFR part 2, subpart B, whether the information is entitled to business confidential treatment, and affording each business an opportunity to comment as to the reasons why it believes that the information deserves business confidential treatment.

3. The Use of Publication in the Federal Register

Section 2.204(e)(1) of Title 40 of the Code of Federal Regulations requires that this type of notice be furnished by certified mail (return receipt requested), by personal delivery, or by other means which allows verification of the fact and date of receipt. EPA, however, has determined that in the present circumstances the use of a Federal Register notice is a practical and efficient way to contact affected businesses and to furnish the notice of opportunity to submit comments. The Agency's decision to follow this course was made in recognition of the administrative difficulty and impracticality of directly contacting potentially thousands of individual businesses.

4. Submission of Your Response in the English Language

All responses to this notice must be in the English language.

5. The Effect of Failure To Respond to This Notice

In accordance with 40 CFR 2.204(e)(1) and 2.205(d)(1), EPA will construe your failure to furnish timely comments in response to this notice as a waiver of your business's claim(s) of business confidentiality for any information in the types of documents identified in this notice.

6. What To Include in Your Comments

If you believe that any of the information contained in the types of documents which are described in this notice and which are currently, or may become, subject to FOIA requests, is entitled to business confidential treatment, please specify which portions of the information you consider business confidential. Information not specifically identified as subject to a business confidentiality claim may be disclosed to the requestor without further notice to you.

For each item or class of information that you identify as being subject to your claim, please answer the following questions, giving as much detail as possible:

1. For what period of time do you request that the information be maintained as business confidential? Note that as of June 26, 2018 the Confidentiality Rule takes effect applying confidentiality determinations such that no CBI claims may be asserted by any person with respect to any documents related to the export, import, and transit of hazardous waste and export of excluded CRTs.

2. Information submitted to EPA becomes stale over time. Why should the information you claim as business confidential be protected for the time period specified in your answer to question no. 1?

3. What measures have you taken to protect the information claimed as business confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered business confidential?

4. Is the information contained in any publicly available material such as the Internet, publicly available data bases, promotional publications, annual reports, or articles? Is

there any means by which a member of the public could obtain access to the information?

Is the information of a kind that you would customarily not release to the public?

5. Has any governmental body made a determination as to the business confidentiality of the information? If so, please attach a copy of the determination.

6. For each category of information claimed as business confidential, explain with specificity why and how release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?

7. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If the business asserts that the information is voluntarily submitted information, please explain whether and why disclosure of the information would tend to lessen the availability to EPA of similar information in the future.

8. Any other issue you deem relevant.

Please note that you bear the burden of substantiating your business confidentiality claim. Conclusory allegations will be given little or no weight in the determination. If you wish to claim any of the information in your response as business confidential, you must mark the response “BUSINESS CONFIDENTIAL” or with a similar designation, and must bracket all text so claimed. Information so designated will be disclosed by EPA only to the extent allowed by, and by means of, the procedures set forth in, 40 CFR part

2, subpart B. If you fail to claim the information as business confidential, it may be made available to the requestor without further notice to you.

III. Publication of the Confidentiality Determinations for Hazardous Waste Export and Import Documents Final Rule and its Effect on this Notice

The Confidentiality Determinations for Hazardous Waste Export and Import Documents Final Rule, EPA-HQ-OLEM-2016-0492, published on December 26, 2017

(“Confidentiality Rule”) and effective on June 26, 2018, finalizes the application of confidentiality determinations such that no CBI claims may be asserted by any person with respect to any documents related to the export, import, and transit of hazardous waste and export of excluded CRTs, including all documents listed in this Notice in section II, above. Therefore, further publications of this Federal Register Notice “Inquiry to Learn Whether Businesses Assert Business Confidentiality Claims” will no longer be needed, after today. Today’s Notice is the last and final publication of this Notice.

IV. What Should I Consider as I Prepare My Comments for EPA?

1. Submitting CBI. Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Please submit this information by mail to the address identified in the ADDRESSES section of today's notice for inclusion in the non-public CBI docket. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. Information so marked will not be disclosed except in accordance with the procedures set forth in 40 CFR part 2, subpart B.

In addition to the submission of one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the notice by docket number and other identifying information (subject heading, Federal Register date and page number).
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Describe any assumptions and provide any technical information and/or data that you used.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Make sure to submit your comments by the comment period deadline identified.

Dated: February 12, 2018.

Robert Tomiak,

Director, Office of Federal Activities.

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